

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NASDAQ, INC.,

Plaintiff,

-v-

EXCHANGE TRADED MANAGERS GROUP, LLC, and
ETF MANAGERS GROUP, LLC,

Defendants.

17 Civ. 8252 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

The Court, in preparing its decision, is interested in identifying each specific expense item which ETFMG's practice of "netting" caused Nasdaq to pay but which was outside the scope of Nasdaq's obligations under the Wholesaling Agreement. The Court accordingly directs the following:


1. By Friday, December 13, 2019, at noon, Nasdaq is to submit a letter identifying each specific such expense item (including by dollar amount) and identifying all admitted evidence, documentary and testimonial, bearing on why this expense item was (a) incurred by Nasdaq as a result of ETFMG's practice of netting, (b) outside the scope of Nasdaq's obligations under the Wholesaling Agreement, and (c) not independently agreed to by Nasdaq or ISE. Nasdaq may briefly explain why the cited evidence demonstrates these propositions.

2. By Tuesday, December 17, 2019, at 5 p.m., ETFMG is to submit a letter in response, identifying any other admitted evidence bearing on the specific expense items

identified by Nasdaq, and setting forth its views as to the questions the Court has raised above with respect to that expense item.

The Court does not invite or authorize a reply. Nor, for avoidance of doubt, does the Court invite or welcome commentary on *any* other issue, including, *inter alia*, alternative theories of recovery or lack of entitlement to recovery. Counsels' submissions are to be tightly focused on the discrete inquiries above.

SO ORDERED.



Paul A. Engelmayer
United States District Judge

Dated: December 10, 2019
New York, New York